

**PIKE COUNTY PROJECT DEVELOPMENT BOARD**

**MEETING MINUTES**

**Pike County Courthouse  
Pikeville, Kentucky**

**June 4, 2009, at 5:00 p.m.**

**PRESIDING OFFICER: Judge/Executive Wayne T. Rutherford**

**MEMBERS OF THE BOARD PRESENT:**

**City Manager/AOC Representative Donovan Blackburn  
Circuit Judge Eddy Coleman  
David Deskins, Circuit Court Clerk  
Citizen at Large Hon. Charles E. Lowe, Jr.  
District Judge Darrell Mullins  
State Bar Association Representative Neal Smith  
AOC Project Manager Jeff Lilly**

**OTHERS PRESENT:**

**Debbie Bailey, Grace Fellowship Church  
Ryan Barrow, Ross, Sinclair & Associates  
Bobby Branham, Executive Assistant to Judge/Executive  
Assistant Pike County Attorney R. Roland Case  
Rusty Davis, Pikeville City Attorney  
Rose Farley, Recorder  
Rhonda James, Finance Commissioner of Fiscal Court  
Carrie Moore, Executive Assistant to Judge Rutherford  
David Sumner, Codell Construction  
Jeanne Robinson, Executive Assistant to Judge/Executive**

**MEMBER OF BOARD ABSENT:**

**Magistrate Jeff Anderson**

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Pike County Judge/Executive Wayne T. Rutherford, Chair of the Pike County Project Development Board, called to order a regularly scheduled meeting of the Board on June 7, 2009, at 5:00 p.m., in the Pike County Fiscal Courtroom, Pike County Courthouse, 146 Main Street, Pikeville, Kentucky. **Upon motion by Judge Darrell Mullins and second by Donovan Blackburn, the Board meeting minutes for May 5, 2009, were unanimously APPROVED.**

Rusty Davis, Pikeville City Attorney, gave a status report on the seven condemnation proceedings. The report is attached to the end of the text of the board meeting minutes of this date, made a part hereof as if fully written herein, and entitled, "Attachment A." Briefly, he reported that Larry Webster has filed an appeal on the second T.J. Realty suit and it would probably be four to five months before any action results, but a motion for trial date is scheduled for August. He has an inspection of the

Pinson Hotel set for Mr. Nunnery for June 17 with requests out to property owners for business records. He said no one has yet entered an appearance for the Pinsons.

He suggested that the Board hire an architect to inspect the hotel to see if there are any code violation items which could be addressed now with that report being turned over to the appraiser. He said Jack Waddles, an architect with Summit Engineering, Inc., would be willing to do this for \$127 per hour and he had used him in other cases. Jeff Lilly, AOC Project Manager, asked why not use the services of the project architectural firm Sherman, Carter, and Barnhart. Attorney Davis said that might be another option.

He then asked that an environmental expert soon be permitted to go through the hotel to seek out mildew, mold or animal contamination problems. Since a survey is already underway with Summit Engineering, Mr. Lilly asked David Sumner of Codell Construction if that same one could be used for Attorney Davis' purposes, adding that this must be done before demolition. Mr. Sumner responded if the study could be incorporated, it would expedite things. When Mr. Lilly asked how soon Attorney Davis wanted this, he replied soon because if a trial date is given soon and the real estate person had to add environmental concerns, then the real estate person would have to consider this in the true value. Judge Coleman asked if the report could be taken on hearsay and Attorney Davis said yes, it could and added if the project architects could do it, then they could also be used as testifiers. Neal Smith proffered that Steve Sherman would be a great courtroom witness if called upon to testify and Mr. Lilly stated he would like to extend the offer to Mr. Sherman first but it would be up to the Board to decide. Attorney Davis said if the project architect was willing to do this, that would be fine. Mr. Sumner, when asked by Mr. Lilly if he had an environmental company, asked Attorney Davis if this was just to settle on another value and Attorney Davis answered this is just to permit the jury to consider what the real value of the hotel is. He said he has a court order to permit inspection since the family would not permit the appraiser to go in. Mr. Sumner suggested an environmental survey in order to see what kind of pipe installation is underneath. Mr. Lilly said the inspection would give what was needed to proceed.

Attorney Davis said if the commissioners' award is paid, possession will be obtained and it could be torn down. Mr. Sumner asked if the commissioners' award could be paid at the next meeting and Mr. Smith suggested a video. Judge Rutherford said the Board thought originally there were several property owners and when he asked Attorney Davis if there were only one, he answered that Larry Blake Pinson came by to see him and wondered why he was getting letters about the case. He explained he was not the owner but Robert Pinson was. Attorney Davis advised emptying the building because it is a liability once the money is paid into the court. He said there would most likely have to be a legal process to move the people out. He asked for the Board's authorization to hire an environmental expert and the project architect, if he will do the inspections. **Upon motion by Neal Smith and second by Donovan Blackburn, the Board unanimously AUTHORIZED hiring of Sherman, Carter & Barnhart, Architects for the proposed Judicial Center, to perform the architectural services and select an environmental group of its choice for the Board.**

Attorney Davis spoke about people relocating and Judge Eddy Coleman stated Larry Webster is moving his office currently and the Artisans Center has already moved. Bobby Branham, Executive Assistant to Judge Rutherford, noted several people have already moved out. Attorney Davis stated three properties have been appealed and the rest have interlocutory orders entered and those may be paid into court and possession taken. Mr. Lilly asked for a dollar amount for defined property. Assistant Pike County

Attorney R. Roland Case said the individual in charge of the Grace Fellowship Church has received a check from the church and he informed the person that closing was not immediate. Judge Coleman pointed out the Board has no ownership interest presently. Mr. Lilly asked if possession could be taken when the check is filed in the Circuit Clerk's office, and Attorney Davis said yes, that the deed would permit a motion to be filed with the Master Commissioner to give possession to the property. Mr. Lilly asked what type of liability the Board is under between the time David Deskins' office receives the check and ownership is given to the Board. Attorney Davis stated insurance must be obtained as soon as possession is obtained. Mr. Lilly said a builder's risk is done for new construction but Attorney Davis said the County probably has sovereign immunity.

Mr. Lilly asked for an amount on the four properties before possession is taken. He said it was more than \$2 million and he would process those as early as tomorrow and the Trustees would cut a check. Attorney Davis said he and Attorney Case would get the three appeals tried as soon as possible and as far as getting the other cases to a jury trial, there is no particular hurry. He said concentration would be on obtaining the Pinson Hotel trial and getting the appeal out of the way. Attorney Davis had a continuance motion set but Mr. Nunnery will be on vacation so that must be changed.

Judge Rutherford presented a proposal for geotechnical exploration with Qore for the Judicial Center. Mr. Sumner said Sherman, Carter and Barnhart had sent the proposal to three different firms. He stated this is preliminary before the building is torn down and then the survey will be done after the building is torn down. The first part will be preliminary designs on the structure. Mr. Lilly pointed out there is no gymnasium as indicated on the first page of the Qore report and he asked for that word and part of the first page to be stricken with a correction to be made. Mr. Sumner stated that on Page 5, top paragraph, the maximum liability is for \$1,500 damage. Mr. Lilly said that was actually inexpensive to pay only \$1,500 if equipment or anything is damaged in the drilling. **Upon motion by Donovan Blackburn and second by Darrell Mullins, the Board unanimously AUTHORIZED hiring Qore Property Sciences, Proposal No. KY4899, to perform geotechnical exploration for the proposed Pike County Judicial Center.**

Judge Rutherford announced the next item as receipt of AIA Performance Bond. He stated the question has been asked as to where the money would come from if the 200% bond is actually required and it was declared to be from the contingency fund. He stated each of those funds has something to do with the project. He said he hoped the Chief Justice, who inherited this, would see that requirement of a 200% bond is "ridiculous" and the wording should be changed which says, "cover the construction manager and the county." He said he did not know why the bond is needed now but it is not normally required until construction begins. He said there was 100% attendance by the county judge/executives at the hearing in Frankfort. Mr. Lilly said Judge Rutherford did a "very eloquent job" but this is what was requested and it must simply be accepted because it is ongoing. He said this is still being reviewed by the same expert.

Judge Rutherford and Mr. Lilly confirmed there are no outstanding bills to be paid at this time. Debbie Bailey of Grace Fellowship Church asked if the church would have to continue paying rent when possession is taken. She said the church has an offer to secure one half of the Dawahare building but it would take several months to renovate. Ryan Barrow of Ross, Sinclair & Associates asked that he be included in the conversation because of the tax issues; that it is important to meet the legal requirements and he asked to be consulted and to be permitted to review any documents so the tax

status will not be jeopardized. Mr. Lilly said AOC is typically not in the business of being landlords and that is something it wants to avoid. Mr. Smith said that the Board is not suggesting the tenants stay and not pay rent but that this Board abort the landlord/tenant business completely. Mr. Lilly said once possession is taken, the Board is liable for anything but he would ask the AOC legal counsel about this and Judge Rutherford noted Ms. Bailey has asked that they be allowed to occupy the church as long as possible. Mr. Blackburn said he assumed there would not be a 24-hour notice and Mr. Lilly said of course not. Mr. Blackburn asked if the Board goes to court to settle these other projects, could the church stay for two months and Mr. Lilly concurred.

A discussion about materials arose when Mr. Blackburn said he had been asked about non-profit organizations being allowed to have donated materials formerly inside the buildings. Judge Rutherford said the Stone Heritage committee had asked about this and Mr. Lilly said it becomes county property so it would be up to this Board and the County to decide this but it again became an issue of liability. Mr. Lilly said state money could not be used for purchase and then the County make a profit on selling materials. Attorney Case said the Board could give property to a city or county government but cannot give it to entities; that the County cannot give property away. He emphasized that the County is not buying personal property. Mr. Barrow stated that the IRS may give credits but it is open to the company to sell materials. Judge Rutherford said the Board needs to discuss this with the owners before possession is taken and Mr. Lilly agreed, as did Attorney Davis who said this must be settled before possession. Mr. Blackburn said it would be a shame to have something usable end up in a dump because of worry about the tax issues. Attorney Davis said the demolition contract may offset this by the contractor itself salvaging the materials and disposing of them properly.

With no further business before the Board, Judge Rutherford ADJOURNED the meeting.

Respectfully submitted,

Rose Farley, Recorder